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THE "GRANDFATHER CLAUSES" IN STATE LAWS DECLARED UNCONSTITUTIONAL.

All of us must agree that any condition attempted to be imposed by state law in defiance of the self-executing provisions of the Fifteenth Amendment should be declared ineffective. But in two recent opinions by the Supreme Court we discover that whether or not the judgments appealed from should stand as therein delivered depended at bottom on the construction of state law. Guin v. United States, 35 Sup. Ct. —. Myers v. Anderson, 35 Sup. Ct. —.

In the former of these cases there were two questions certified by Circuit Court of Appeals, the answer to one being "yes," and to the other "no." These answers have the effect of sustaining a prosecution of defendant for violation of the penal code of the United States, but whether the state law as a whole really violated the Fifteenth Amendment was said by the chief justice to be "a question of state law," which, "in the absence of any decision on the subject by the supreme court of the state we must determine for ourselves."

The question depended upon whether an amendment to Oklahoma constitution which declared a literacy test for voters was made void in its entirety by providing that it should not apply to anyone who was entitled to vote on or before January 1, 1866, or to any of his lineal descendants.

This is not stated to be a proviso or an exception, but it would be difficult in construing the provision to enforce anything but a kind of technical construction to distinguish the clause from a proviso or an exception.

We have no desire, however, to go into any discussion as to whether the chief justice was right or wrong in his conclusion that the entire provision as to a literacy test fell by the wayside. We wish to point out that he admits the question is one of state law. But, if Oklahoma Supreme Court had decided that the literacy test remained and only the exception perished, the first of the questions of the Circuit Court of Appeals would have been answered differently, and the second, as it was, because the first referred to the provision as a whole and the second only so far as concerned the exception. An affirmative answer to the second question would have sustained the prosecution.

Under the circumstances should the Supreme Court have entertained the first question at all? It is one of the banes of our law, that decision is so inconclusive—filled with mere personal views of the writers of opinions. It is difficult, often, to separate the wheat from the chaff, but when a judge recognizes that he is only giving us chaff, supposedly the dignity of his position should restrain him.

In the other case it is said as to a provision of Maryland statute, which was violative of the Fifteenth Amendment and claimed to render the entire statute void that, "In the Guin case this subject was also passed upon and it was held that albeit the decision of the question was in the very nature of things a state one, nevertheless in the absence of controlling state rulings it was our duty to pass upon the subject."

Looking at the question before the court in that case and we find that only the clause antagonistic to the Fifteenth Amendment was at all involved, the suit being one for damages against a registering officer refusing to register plaintiff as a voter under that clause and no other. This clause was not at all in the way of an exception but in the way of prescribing the qualifications of voters.

To show how greatly did appear this obiter dictum, it was urged by defendant, when the court said the entire statute fell, that there survived no right of action because there was no statute granting the right of suffrage and hence plaintiff had been deprived of no right. Then the court fell back on the right of suffrage under Maryland constitution, and sustained the action.

The court would have saved itself much trouble and would not have made a pronouncement unnecessary as to a general statute, had it confined itself only to the unconstitutional part of the statute, and whether it was separable or not from the rest of the statute made not one iota of difference as to plaintiff's rights. Both in the Guin case and in this case the gravamen of action was the antagonism to the Fifteenth Amendment, and this antagonism, if it existed in fact, would have its effect whether it affected an entire provision of state law in which it appeared or was separable.

NOTES OF IMPORTANT DECISIONS.

SALES—LIABILITY OF SELLER OF AUTOMOBILE FOR DEFECTS IN ASSEMBLED PARTS.—A decision by Second Circuit Court of Appeals shows a divergence of view from Supreme Court of New York sitting in Appellate Division, in quite an interesting question. Cadillac Motor Co. v. Johnson, 221 Fed. 801.

The question in both courts was whether the seller of an automobile, which he sold as a manufactured article, was liable for it as an entirety or only for defects in the parts assembled and manufactured by it, and impliedly warranted as fit for an intended purpose by the user. His liability for the other parts, if correctly assembled, was asserted to depend, so far as purchasers from him were concerned, on whether or not he used ordinary care in their purchase, and that no defects were discovered in reasonable tests.

In McPherson v. Buick Motor Co., 145 N. Y. Supp. 462, 160 App. Div. 55, reaffirmed in Quackenbush v. Ford Motor Co., 153 N. Y. Supp. 131, the view was taken, that, though an automobile may not be deemed an inherently dangerous machine, it becomes such when its parts are improperly assembled and those parts are constructed of materials which will not stand the necessary strain to which it is contemplated they will be subjected.

In other words the rule which was declared as to a defective buggy wheel bought by a carriage maker from a well established manufacturer of buggy wheels, did not make the carriage maker liable to a purchaser from it, as declared by Supreme Court of Tennessee in Bierkett v. Studebaker,1 50 S. W. 421, did not apply to a manufacturer of automobiles who does not manufacture all of its assembled parts. He is obligated to test those parts as if he were the actual manufacturer.

The Johnson case, supra, denies that the rule applicable to a seller of articles inherently dangerous, such as poisons, dynamite, etc., applies to a sale of automobile, but rather the rule applicable to the sale of tables, chairs, carriages, etc., and the question of any distinction between an assembler of parts of a complete machine and the manufacturer of all of its parts is not directly alluded to. However, it is stated that the prospectus does not assert that the manufacturer claimed to have manufactured the wheel, from defect of which the injury sued for resulted. Impliedly, therefore, it regards a distinction between the two.

Coxe, C. J., dissented on the ground that the principles of law invoked by the defendant had their origin many years ago, when such a delicately organized machine as the modern automobile was unknown. "Rules applicable to stage coaches and farm implements become archaic when applied to a machine which is capable of running with safety at the rate of 50 miles an hour. I think the law as it exists today makes the manufacturer liable if he sells such a machine under a direct or implied warranty that he has made or thoroughly inspected, every part of the machine, and it goes to pieces because of rotten material in one of its vital parts, which the manufacturer never examined or tested in any way. * * * The ultimate question is—can a manufacturer of motor cars escape liability for injury occasioned by a grossly defective wheel by proving that he purchased the wheel from a reputable manufacturer? I think this question should be answered in the negative."

There is much force in the position of the New York Courts and we think courts err in not extending the principle of a correctly built and assembled automobile not being an inher-

ently dangerous machine so as to make it cover one that is otherwise.

CORPORATIONS—NOTE GIVEN ON SUBSCRIPTION CONTRACT AND ONE GIVEN FOR STOCK.—Two cases decided in different Courts of Civil Appeals of Texas reach opposite conclusions as to liability of two note signers, one on a subscription contract for stock in a corporation and the other for payment of stock issued. Forster v. Enid & O. W. R. Co., 176 S. W. 788; Sturdevant v. Falvey, 176 S. W. 908.

Texas constitution provides that no corporation shall issue stock except for money paid, labor done or property actually received. In the Sturdevant case supra a note showed on its face that it was given for the purchase price of stock in a corporation and it was held that it was subject to defense for illegal consideration even in the hands of a purchaser before maturity.

In the Forster case a holder purchased before maturity a note with actual knowledge that the consideration was stock to be afterwards issued—in other words, an ordinary subscription contract.

In this case the court said that: "The courts universally hold that knowledge that a note was given in consideration of the executory agreement or contract of the payee which has not been performed will not deprive the indorsee of the character of a holder in due course unless he has notice of the breach of that agreement or contract." Therefore it was ruled that the purchaser took good title.

The Sturdevant case speaks of a distinction recognized in Texas between a subscription note for stock and a note for stock itself and does not regard the two rulings as inconsistent. Is this, however, fair construction of a constitutional provision? It certainly does not assist in promoting honesty among corporators so far as organization is concerned under statutes requiring all or partly all of capitalization to be actually paid in. On the contrary, it enables corporators to evade such statute by taking subscription notes, while this they cannot do by selling notes for stock, because before incorporation no stock is in existence.

Besides there is no real harm in a corporation already set on foot selling its stock on whatsoever terms it pleases, while there is harm in its organizing without required assets. The latter, we think, was aimed at by the constitutional provision and not the former. The construction adopted is that sometimes called "sticking in the bark."

RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS' ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

QUESTION No. 79.

A young man, intending to apply for admission to the bar, but not yet having taken the examination, has a position as a law clerk in the office of a firm of attorneys. The young man and the firm wish his friends to know where he is and that he holds an important position in the office, believing it to be possible that some legal business may follow him into the office.

Under these circumstances, is it proper that the name of the young man should appear upon the office door, underneath and separated from the names of the firm and the partners, there being nothing on the door to indicate that the firm is a law firm or practicing law? The young man's name does not appear upon the stationery.

ANSWER No. 79.

In the opinion of the committee, the placing of the young man's name upon the door under the specific conditions of the question and with the purpose indicated, would seem to be objectionable. It is not proper for members of the bar even to aid in misrepresenting any occupant or employe in the office as being a member of the bar.

QUESTION No. 80.

Friends of a law clerk not yet admitted to the bar occasionally retain the attorneys in whose office the law clerk is employed, probably out of compliment to the law clerk. It is well understood that the firm cannot divide with the clerk any fees resulting from this business. The clerk receives a regular salary.

Is it improper for the attorneys to recognize the quality of the services performed by the clerk in assisting the firm in transacting this business by making him additional compensation from time to time, not measured or graduated as a percentage of the fees of the business, but being more or less arbitrary in amount?

ANSWER No. 80.

In the opinion of the committee, the practice mentioned in the question is improper. It violates the rule that a lawyer should not pay, by way of bonus or otherwise, to a person not an attorney at law, a consideration for bringing in business.

QUESTION No. 83.

Is it ethical for a lawyer who is an expert in the preparation of briefs to put a card in a legal journal announcing his preparedness to do special work of this kind

ANSWER No. 83.

In the opinion of the committee, there is no impropriety in a lawyer's offering his assistance as a brief-writer to other lawyers in the manner stated. But see Answers to Questions 36, 48, 58 and 65; and Number 27, Canons of Ethics of American Bar Association.

AN ABSURD EFFECT OF A VERDICT OF "GUILTY BUT INSANE."

Some of our contemporaries several years ago upbraided us for withholding our approval of a proposed reform in the criminal law whereby in cases where insanity is pleaded the jury should be permitted to render a verdict "guilty but insane."

The demand for this reform arose out of the Thaw trial and its sponsors pointed to the fact that England had led the way in that reform and seemed to be satisfied with it.

Without knowing what England may have thought with respect to her own reforms, we took the position that such a verdict was a ridiculous paradox and if attempted to be enforced, would result in the state itself working a great wrong upon the innocent and the unfortunate.

Our attention has just been called to the June (1915) number of Law Notes (London), in which the editor has some very caustic comments on the English Act authorizing a verdict of "guilty but insane." The occasion for comment was the effect of such a verdict on the right of such insane "murderer" to inherit from the deceased.

We reprint in full the comment of our contemporary[1] as indicating some of the absurdities resulting from such a verdict as is herein adverted to. Our contemporary says:

"When in serial fiction the younger son and villain of the piece kills the elder son to get the estate and title, his labor is, as we know, thrown away, because it always turns out in the penultimate chapter that the eldest son wasn't killed at all but still lives to take the title and marry the heroine in chapter the last. Hence interesting legal questions are, in the realms of fiction, prevented from arising. Truth is, however, stranger than fiction, and in real life such questions sometimes do occur. Could Cain succeed to his brother's title and estates? We do not know of any authority as to the title. After all, when the worst is said that it is or was the fashion to say of ducal families, murder is not a common incident of family life even in the most exalted circles, and we are not aware that the point has been presented for express decision. But we presume the rule as to the family title is the same as that relating to the family acres, and there is no doubt about them. We know that books on real property, in discussing the law of descent, talk about a man 'making himself heir' to John Styles. But a man cannot 'make himself heir' *vi et armis*. He can't make himself heir if to do it he has to murder his ancestor. 'It is clear that the law is that no person can obtain or enforce any rights resulting to him from his own crime; neither can his representative claiming under him obtain or enforce any such rights. The human mind revolts at the very idea that any other doctrine could be possible in our system of jurisprudence.' Re Crippen, (1911) p. 108, at p. 112. The man who murders another because he himself stands next in succession may, from the legal standpoint, say with one of Mr. Shaw's characters that he has committed a perfectly 'disinterested murder.' Only a madman would do such a thing. He did it in the case of In re Houghton.

"In this case, one Houghton had, in a fit of insanity, killed his father and brother, and had been tried on a coroner's jury's inquisition of murder. As he was clearly not responsible for his actions within the doctrine of MacNaghten's case, 10 C. L. & F.

200, a law which recognizes that the *mens rea* is a necessary ingredient of crime, and that unless he has a guilty mind a man is not a criminal, would logically provide that a man with no mind at all should be found not guilty. The wisdom of our legislators embodied in the Trial of Lunatics Act, 1883, requires the jury to find him 'Guilty, but insane.' To find, that is, 'that prisoner had a guilty mind but was out of it at the time.' To find in fact that he is 'guilty, but not guilty.' We have all heard of funny verdicts, but did ever twelve of the biggest fools that ever got into a jury box evolve a more perverse verdict than the wisdom of the sovereign legislature has contrived? It might come straight out of Alice in Wonderland.

"However, 'tis a mad world, my masters, and in obedience to the law on lunacy (we had well-night written lunatic law) the jury which tried Houghton found him 'Guilty, but insane.' He was thereupon ordered to be detained during His Majesty's pleasure, and the question arose whether he could share under his father's intestacy. If he was guilty of murdering his father he could not do so. On the other hand, was he in the circumstances to be treated as 'guilty?'

"Mr. Justice Joyce had little difficulty in holding that the jury's verdict of 'guilty' was really one of 'not guilty.' Indeed, the House of Lords had already so decided in Felsted v. The King, (1914) A. C. 534. They held in that case that 'Guilty, but insane' must mean that the jury found 'that the act has been done by the prisoner which fixes him as a criminal unless he is a lunatic, implying that if he is a lunatic he is not a criminal and is not convicted of any offence.' Hence, the special verdict, 'Guilty, but insane,' being one of acquittal, as prisoner is not a 'person convicted on indictment,' he cannot appeal under the Criminal Appeal Act, 1907. Which is rough on him.

"However, such, pending statutory alteration, is the law as declared by the highest tribunal, and when a jury intend to acquit a prisoner on the ground of insanity they use the formula, 'Guilty, but insane,' which is read as 'not guilty.' And if the accused is 'not guilty' then there is no reason why he should not succeed to his share in the assets of the person of whose murder has has been acquitted, which is what Mr. Justice Joyce decided in Re Houghton."

A. H. ROBBINS.

DRIVING ACCIDENTS — RECENT ENGLISH DECISIONS ON THE DUTIES OF CROSSING VEHICLES.

The recent articles in the Central Law Journal as to accidents to passengers from street traffic and the degree of care required by automobile drivers at crossings have suggested to the writer that a short account of a leading case recently decided here as to the rights and liabilities of crossing traffic might prove practically useful to readers. The value of the case is that it endeavors to introduce some principle into a subject which has always been left to the operation of the unsatisfactory rule that the special circumstances of each case, as it arose, should and must determine the result. As we shall show the principle laid down has been somewhat qualified, and resort again had to the rule of special facts and circumstances, but nevertheless we have found the principle helpful and a good guide in vehicle collision actions.

The case we refer to is McAndrew v. Tillard, 1908, 46 S. L. R. 112, in which the driver of a motor car attempting to cross a very frequented and main thoroughfare from a side road was held liable for damage caused by his car to a car on the main road with which he collided. In dealing with the case the Lord President made the following observations, which really gave the case its importance: "If," said he, "there is one rule more than another that it is necessary to lay down for the practical conduct of traffic, it is that it is the business of those who are on the

side road and going to cross the main road, to look out when they enter the main road and to give way to all traffic which is coming along the main road. Of course, there is a degree in everything. They have a right to cross the main road and it does not mean that they are never to get across the main road until nobody else is in sight, but it does mean that where there is any possibility at all of collision it is the business of the person on the side road to give way to the person on the main road, and as the corollary to that it means that you ought to approach into a main road from a side road at such a pace as to have your car entirely under control, so as to be prepared for whatever you find is the state of affairs upon the main road."

The clearness and practical force of that statement will be at once appreciated. Yet it has been thought by some judges too general, and that the only safe rule is to decide each case on its own facts and circumstances. Thus, in a subsequent road collision case between a motor car and a motor cycle (*Robertson v. Wilson*, 1912 2 S. L. T. 166), Lord Dewar in charging the jury said: "It was the duty of the pursuer before he emerged from the single road, to look out for and if necessary give way to all traffic on the main road, but there was also a duty on those using the main road to take all reasonable care of traffic coming from the side road." It will be seen that the first part of that sentence was just the point of the decision in *McAndrew v. Tillard*. Exception was taken to the jury's verdict on the ground that the direction which had been given them in the second part of the sentence quoted was contrary to the decision in *McAndrew v. Tillard*. The Inner House, however, did not think so; they emphatically laid down that a duty of caution is imposed on the driver on the main road as well as the driver on the side road.

We might cite other cases in which the principle of *McAndrew's* case influenced the decision, and others where it was held that special circumstances ousted its application, but we shall close with an attempt to define the position of the law now on the point under discussion. In our opinion it is this,—The vehicles on each road must approach the crossing with caution and take all reasonable care for the safety of traffic on the other, and while it might be going too far, to lay down that this duty lies in a higher degree on the one vehicle than on the other, yet there is a real and very definite distinction in the matter of right. The vehicle on the main road is in possession, while the vehicle coming on to it from the side road is in the position of one who must wait his opportunity to cut in without displacing those already in possession. Accordingly, if two vehicles approach the crossing together and one or the other must give way to avoid collision, the right to proceed is with the vehicle on the main road. If the driver on the main road has approached the crossing with proper caution and given reasonable opportunity to any driver on the side road to be aware of his approach, he is then entitled to proceed to take possession in the belief that this other driver can and will protect himself from a known danger.

DONALD MACKAY.

Glasgow, Scotland.

BANKRUPTCY—SURETY ON APPEAL BOND.

JAMES et al v. HARRY KITZINGER & CO.

Court of Appeals of Alabama. April 13, 1915.

68 So. 582.

Where a case is tried on appeal and the principal on the appeal bond prevents judgment from being obtained against him by pleading a discharge in bankruptcy, the sureties are not liable on the bond.

[It is unnecessary to recite any facts beyond what appear in the part of the opinion below shown.—EDITOR.]

[3] The other special plea set up that the principal in the bond—the American Cloak & Suit Company—against whom plaintiff obtained the judgment on June 20, 1912, on the trial of the appeal, which the bond was given to secure, was subsequently adjudicated a bankrupt on, to-wit: August 12, 1912, and was later on, to-wit: June 2, 1914, discharged from liability on all debts, judgments, etc., provable against it under the Bankruptcy Act. The adjudication and discharge in bankruptcy of the principal was, as will be observed, after judgment had been obtained against it on the trial of the appealed case, and this suit is, as seen, a common-law action on the appeal bond against its sureties for a failure to comply with the terms of the bond, which bound them to pay the judgment obtained against the principal. Clearly, therefore, the case of Young v. Howe, 150 Ala. 157, 43 South. 488, where no judgment on appeal had been obtained, and where on the trial of such appeal the plea of a discharge in bankruptcy was filed by the principal, the defendant on appeal, to prevent such a judgment, has no application. The terms of an appeal bond bind the sureties "to pay such judgment, both as to debt and costs, as may be rendered against the principal on the trial of the case on appeal," and when, as here, a judgment has been obtained against the principal on such appeal, his subsequent discharge by operation of law from the payment of such judgment, as by bankruptcy, while it relieves him (Ellis v. Mobile, etc., 166 Ala. 187, 51 South. 860), does not operate to discharge the sureties from their obligation to pay that judgment. (Garnett v. Roper, 10 Ala. 842; Leader v. Mattingly, 140 Ala. 444, 37 South. 270; State v. Parker, 72 Ala. 183; Smith v. Gillam, 80 Ala. 300; Mount v. Stewart, 86 Ala. 365, 5 South. 582; 16 Am. & Eng. Ency. Law [2d Ed.] 792, and cases cited in Note 5).

[4] On the other hand, where the principal, on the trial of the case on appeal, prevents a judgment from being obtained against him by pleading his discharge in bankruptcy, then the sureties are not liable on the bond, because the condition to their liability as fixed in the bond, to-wit: a judgment against the principal, has not been met. Young v. Howe, supra.

As to the last contention of appellants, to the effect that the court erred in declining, as recited in the judgment entry, to permit them, during the progress of the trial, to amend one of their special pleas, it need only be said that it nowhere appears that any exception was taken to the action of the court in this particular; the appeal here being on the record proper without a bill of exceptions.

Affirmed.

NOTE.—*Discharge of Bankrupt Principal as Releasing Surety on Appeal Bond.*—There is a distinction declared in the instant case which seems to us not in accord with the true meaning of the bankruptcy act. We can see clearly why a judgment against the principal on appeal and the surety on his bond, already rendered, is not discharged as to the surety, because of the discharge of the principal in bankruptcy, but we think it far from clear, that an obligation entered into before bankruptcy to become responsible should be discharged as to all parties, because it can never be pronounced due as to one of them, be he principal or surety.

Take the case of Schunack v. Art Metal Novelty Co., 84 Conn. 331, 80 Atl. 290, and we have a situation in no respect different from that in the instant case. This was an attachment case and a bond given conditioned upon judgment being rendered against the defendant, principal in the bond. Pending the suit he was adjudicated a bankrupt. While relief was denied to plaintiff, it was stated that under proper circumstances and in courts admitting the propriety of rendering special judgments (those of Connecticut being among them) a special judgment against surety with perpetual stay of execution against defendant could be rendered. It was said: "A special judgment is not rendered as matter of course, whenever a general judgment is impossible. * * * There may be situations, however, in which it becomes an indispensable means to an end which the plaintiff is in justice and right entitled to reach." Here it would seem that the right is extended or not as a matter of justice according to practice of courts.

In Hill v. Harding, 130 U. S. 699, 32 L. Ed. 1083, it was ruled, that in such a case as stated in Schunack, *supra,* there was nothing in the bankrupt act to prevent the rendering of the special judgment. It was said: "The judgment is not against the person or property of the bankrupt and has no other effect than to enable the plaintiff to charge the sureties, in accordance with the express terms of his contract, and with the spirit of that provision of the bankrupt act which declares that 'no discharge shall release, discharge or affect any person liable for the same debt for or with the bankrupt, either as partner, joint contractor, indorser, surety or otherwise."

In Butterick Pub. Co. v. Bowen Co., R. I., 80 Atl. 277, exactly the same thing as in the Schunack case was held and Hill v. Harding, *supra,* cited, but there was no reference to the rendition of such judgment being made to depend on state practice or that its rendition depended on a peculiar situation outside of the principal's bankruptcy.

In Wind Engine & Pump Co. v. North Pa. Iron Co., 227 Pa. 262, 75 Atl. 1094, it was ruled that there was nothing in the law or practice in Pennsylvania to prevent the rendition of a special judgment against one discharged in bankruptcy, and accordingly it was ruled in an appeal case, that such a judgment could be rendered. The court said: "The appellee has secured its discharge and its personal liability is gone; but that does not constitute any reason why a judg-

ment against it should not be rendered for the special purpose of fixing and enforcing the liability of the surety. The surety took the risk of appellee's insolvency, a risk that the appellant was supposedly protected against by the very bond in question. So it would be most unfair to allow the substitution of the goods attached and then to deny the formal relief necessary in order to enforce its terms against the surety."

In Brown & Brown Coal Co. v. Antezak, Mich., 128 N. W. 774, the same holding was made as in the cases above, and Hill v. Harding was cited, it being said that the Act of 1898 is virtually the same as in that on which that case was predicated. This Michigan case also was an appeal bond case just as in the instant case.

A number of cases were cited, among others, Knapp v. Anderson, 15 N. B. R. 316, which said: "The design of an undertaking and the effect of it are proper matters of consideration on the question. * * * The sureties in the undertaking prevent the plaintiff from obtaining his debt out of the property of his debtor. This right can be destroyed in all cases if the debtor, by appeal and by subsequent proceedings in bankruptcy before a judgment of affirmance can release himself and his sureties as well. It was doubtless to prevent such and kindred results that the law declared the discharge shall not release or affect any person liable for the same debt for or with the bankrupt, either as partner, contractor, surety or otherwise."

We think we have cited enough cases to show, that there can be little supporting authority for such a distinction and ruling as the instant case makes. C.

REVIEW OF CURRENT PERIODICAL LITERATURE OF INTEREST TO LAWYERS.

Carriers. "The Liability of the Common Carrier as Determined by Recent Decisions of the United States Court." By Edwin C. Goddard, of the University of Minnesota. 15 Columbia Law Review, p. 399 (May).

This article is quite a learned and exhaustive review of the liability of common carriers, beginning with the celebrated English case of Coggs v. Bernard. The author goes into a learned investigation as to the origin of the law announced in Lord Holt's decision, with a view of determining whether it was not in fact borrowed from the Romans and grafted on the English law. The principle announced in the Coggs case was that if a delivery of goods to carry or otherwise manage is made to one who exercises a public employment, and he is to have a reward, he is bound to answer for the goods at all events. The law charges this person "thus entrusted to carry goods, against all events but acts of God and of the enemies of the king." The author states that the strict rule of the liability of the common carrier was adopted at a time when the highways of England were bridle paths through the forests, when they were infested with robbers and when means of communication were few and slow. He says, however, that the courts refuse to modify the rule, even though conditions have changed, declaring that in some cases the courts have held that conditions to-day make the rule even more necessary than did conditions one hundred years ago. The author then discusses a line of English decisions permitting the common carrier to limit his liability, saying that the American authorities, as a rule, have refused to follow the English authorities, thus preventing the wholesome doctrine, as it was first announced, from becoming authority here. The author gives credit to Judge Bronson in the early New York case of Hollister v. Nowlen, 19 Wend. 234, for his strong resistance to this innovation. He declares that the logic of Judge Bronson, showing that the carrier could not limit his common law liability, even by bringing notice home to the shipper, was so powerful and convincing that it was quickly accepted by all American tribunals. While Judge Bronson doubted that the rule should apply to express contracts restricting carrier's liability, yet the rule was settled adversely by Justice Cowen, writing the opinion for the same court in the case of Cole v. Goodwin, 19 Wend. 251, 281, holding that the same principles excluded such a contract as being against public policy.

The author then takes up the epoch-making decision of the United States Supreme Court in the case of New Jersey Steam Nav. Co. v. Merchants' Bank, 6 How. 344, which he says has thrown the whole question into confusion, and has been the cause of unending litigation. In this case the Supreme Court held that as between the parties such contract was purely personal, involving simply rights of property, and that there was no reason why such a contract should not be held to be good. The author holds that the result of this Pyrrhic victory has been costly if not disastrous both to the carriers and to the public. The writer then takes up the case of Railroad v. Lockwood, 17 Wall. 357, which demolishes Justice Nelson's opinion in the Merchants' Bank case, and settles for all time the rule as it had formerly existed. What the Lockwood case really did, however, was to enable the carrier to throw off his common law liability in so far as it was considered by the court to be reasonable to allow him to do. He could not, however, do this by a general notice to the shipper. Justice Bradley, in the Lockwood case, held that the legality of contract limitations was stare decisis, and that all the court could properly do was to safeguard the use by the carrier of such so-called contract limitations. He does not seem to have the prophet's vision to see what a flood of litigation would ensue to determine what was reasonable and just. The Lockwood case, however, settled this: that in almost every state the carrier was forbidden to contract against liability for loss due to his own negligence. Practically any other restriction was held to be reasonable and just. The author's consideration of the recent cases and the distinctions made throughout are interesting and valuable.

Constitutional Law. "Full Faith and Credit vs. Comity and Local Rules of Jurisprudence and Decision." By Henry Schofield. 10 Illinois Law Review, p. 11 (May).

The author's article is built around the recent decision of People v. Shaw, 259 Ill. 544, which took advantage of the Supreme Court ruling in the Haddock case, refusing to give effect to a decree of divorce granted in another state on service by publication. In the Haddock case the Supreme Court held that where one of the parties to a marriage leaves the matrimonial domicil and goes to another state, a decree of divorce granted in the latter state on service by publication is not within the full faith and credit clause, but its effect is determined by ordinary rules of comity between the states. The writer is one of many recent authors who have taken opportunity to criticise the Haddock case and to request the court to reconsider the question. He says that the purpose of the constitutional provision giving full faith and credit judgments to sister states was adopted to avoid just the condition which the Haddock case brings about. On this point he says:

"The idea exists only in the minds of those who utter it and those who subscribe to it. It is not in the law and never was. Under the articles of confederation and before the framers of the constitution experienced the practical evils flowing from state comity as the rule for the enforcement of state judgments and decrees in other states, and they intended to, and did, provide adequate means for cutting out comity by the roots; and in 1790 and 1804 Congress completed the work. If Congress sees fit to allow state comity to preside over the enforcement of state divorce and some other judgments and decrees, perhaps Congress has the power to do it under the grant of legislative power in the full faith and credit clause."

The author considers the rule untenable, mischievous and destructive of public morals, saying that comity as applied by the courts of several states to divorce decrees granted by the courts of other states entails the result of allowing people to practice under the protection of the law the sailor's idea of happiness, "a wife in every port," or "a husband in every port," as the case may be. The author investigates, at great length, decisions leading up to the Haddock case, especially such decisions as define what is meant by 'full faith and credit clause" of the constitution. The author takes the position that when a state renders a judgment it is good everywhere to the extent of the jurisdiction of that court, or it is not good at all, either within or without the state, and that if it is not a void judgment it is entitled to full faith and credit in every other state, at least to the exent of its operation in the state where the judgment was rendered. In other words, the author concludes that there cannot be a judgment good in one state and not entitled to full faith and credit in another.

International Law. "The Destruction of Neutral Prizes and the German Prize Code." By C. H. Huberich, of Berlin and Hamburg. 10 Illinois Law Review, p. 5 (May).

This article discusses the rules of law covering the destruction of the American vessel, Wm. P. Frye, at present the subject of diplomatic controversy between the American and German governments. The author also discusses the sinking of the Dutch steamer, Medea, by a German submarine. The author does not believe that the German decree declaring the waters surrounding Great Britain and Ireland a military area was intended to effect a change in the existing German Prize Code, not having been published in the Official Collection of Laws (Reichsgesetzblatt). The author discusses at great length the question of destruction of neutral prizes, beginning with the old English case of the Actaeon, decided in 1815, and comes to the conclusion that the early cases hold it to be a rule of international law that where a ship is neutral the act of destruction cannot be justified by the gravest importance of such an act to the public service of the captor's or the destroyer's own state; and that to the neutral it can only be justified under any circumstances by full restitution. The author calls attention, however to Article 113 of the German Prize Code, which provides that a neutral vessel carrying contraband or attempting a breach of blockade may be destroyed by the captor without bringing the boat into port, wherever the bringing of the boat into port would subject the warship to danger or be liable to impede the success of its operations, and such circumstances are further extended to include the case where the ship captured is in a defective condition or has not sufficient supplies to carry it to port or is not fast enough to follow the warship, thereby making it liable to capture, or where the proximity of the enemy creates a fear of recapture, or where the warship is not in a position to furnish a sufficient prize crew. In conclusion the author says:

"The German Prize Code does not specifically provide for compensation for enemy property (not contraband) destroyed with the vessel. The leading authorites state, that compensation must be paid for such portions of the cargo. It is to be noted, however, that in the case of The Glitra, the Prize Court of Hamburg decided that the owners of neutral goods on board an enemy vessel destroyed by the captors are not entitled to compensation. This is contrary to the views of the best authorities on German prize law, and it is probable that the view of the trial court will not be sustained in the pending appeal."

Public Lands. "The New Public Land Policy with Special Reference to Oil Lands." By Wm. E. Colby, of Berkeley, Calif. 3 California Law Review, p. 269 (May).

This is a very timely article on a subject of great interest, involving the new policy of conservation of the public interest in lands. The author refers incidentally to the policy of protecting the forests and the coal lands, which are part of the public domain, but his principal argument is directed to the conservation of public lands, under which oil and other minerals have been discovered. The author shows the great change in public sentiment in recent years, due to discovery and publication of the fact that vast mineral interests belonging to the federal government, including large and valuable deposits of petroleum, water power, phosphates, potash, etc., were being secured under the former liberal acts of Congress, at practically no cost, and were being monopo-

lized to the detriment of the public. This condition led to a change of policy during President Taft's administration, resulting in the well-known order of September 27, 1909, withdrawing from all forms of disposal and "in aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, over three million acres of land in California and Wyoming, which included most of the territory known or thought by the Geological Survey to be valuable for oil. This very sweeping action on the part of the executive setting aside an act of Congress created great consternation, and the President, himself a great lawyer, was not convinced of the unqualified legality of his act. On June 25, 1910, however, Congress, at the suggestion of the President, passed an act validating the federal control of these lands and giving congressional sanction to what had been done. Subsequent litigation ensued, however, as to the legality of the order applying to the claims asserted under the statute before its amendment by the act of June 25, 1910, but after the Federal Order. This litigation came to a head in the case of the United States v. The Midwest Oil Company, which was decided Feb. 23, 1915, by a vote of five to three in favor of the legality of President Taft's order, and ousting a claimant who based his right on discovery of oil made by drilling a well six months after the lands had been withdrawn under the order of September 27, 1909.

The author shows that the decision was contrary to principles heretofore announced by Constitutional construction, and comes to the conclusion that the decision was based, as Justice Lamar suggested, on the broad ground that government is a practical affair intended for practical men, and that therefore law-makers, officers and citizens "naturally adjust themselves to any long continued action of the executive department," and that, therefore, since it had been the custom for the executive to withdraw lands for military, Indian and other purposes, that such an act would be held legal since Congress had not heretofore taken exception to the President's actions. At any rate, the act of the President was in force until Congress should see fit to disaffirm it. It was admitted in both the prevailing dissenting opinions that the President had no authority to set aside an act of Congress as a general proposition, but that in the case of public lands certain practices had been so long allowed and so often repeated as to crystallize into a regular practice that it must be regarded that Congress had at least acquiesced. The author shows the strength of Justice Day's position, from the standpoint of constitutional principles, but declares that the majority of the court, in reaching so liberal a conclusion as to the question of this executive power, were influenced by the modern conservation policy, and the pressing necessity for immediate action in the effort to retain under public control as large an area of valuable oil lands as possible. On the other hand, Justice Day's decision was that, irrespective of the beneficial results to be obtained by the consummation of federal conservation policies, the executive's action in withdrawing all of the land of public domain known or thought to be valuable for oil, was virtually nullifying and suspending the operation of the last expressed will of Congress. The author states that the decision in the Midwest case is likely to create much litigation and will be of far-reaching importance as extending and enlarging the power of the executive to suspend law. The author quotes, however, Secretary Lane's statement that this decision and the statutes that have followed it has put an end to the gigantic land lottery heretofore conducted under government auspices and that hereafter the government will not part with its valuable mineral lands for little or nothing, but will grant the use of them on a system which will return to the public some of their value, which belongs to the public, and will eliminate to a degree all elements of speculation.

Statutes. "Law Reform in California." By Joseph L. Lewinsohn, of Los Angeles. 3 California Law Review, p. 300 (May).

The title of this article would have been a more accurate description if it had proposed to discuss the failure of codification in America. The article does not discuss reforms in procedure, nor does it profess to discuss such modern reforms as workmen's compensation laws, blue sky laws and others. The author is discussing rather the attempted codification of law and the inflexibility that hampers judicial decision and all growth of the law, and quotes with approval, as a text for his remarks, Lord Bowen's remark that the law should follow business, indicating the great flexibility of the common law as being its most peculiar attribute. The author discusses at length the vagaries of the English polemist, Jeremy Bentham, who berated the common law as being irrational and unscientific, and showed a remedy for all its shortcomings in codification. His views being rejected in England found more favor in this country, at least among the people, to whom he appealed by stating that if his code were accepted there would be no use for lawyers, as every man could then be his own lawyer. In 1849 New York appointed a commission to incorporate the ideas of Mr. Bentham, and Mr. David Dudley Field, a devout disciple of Mr. Bentham, was one of these commissioners. When the code had been completed, however, the New York Legislature rejected it, but it was adopted almost verbatim by the Territory of Dakota, and later, in 1872, by California. This code was defective in arrangement, made no provision for growth, its draftsmanship was very bad, and the principles of the common law were even misapprehended. This is the indictment which the author brings against the Field code. It would have been better, the author suggests, to have taken to Roman Civil Code, the result of hundreds of years of painstaking effort, and have adopted that code to modern conditions. The great defect in American codes has been, the author contends, that the compilers have thought to provide for every detail of application instead of doing what the Roman code has done, declare only the most general principles, leaving the application of such principles as flexible as possible in order to meet the kaleidoscopic changes of human experience. As indicating the continual growth of law, the author calls

attention to the fact that forty years ago hundreds of topics now known and discussed in text-books on the law were absolutely unfamiliar to lawyers or judges. For instance, the author cites the law of quasi contracts, now so thoroughly developed, as being a development of the law of a very recent date. The author's conclusion is that the law cannot be confined to a narrow code, but that all statutes must be so drawn as to permit growth. In other words, the details must be omitted and "enumeration" avoided. For example, the author says the code should not define fraud for the same reason that courts of equity have refused to define that term "for fear that some crafty scoundrel might devise a new species of fraud and circumvent the definition." The author does not object to codification, but to the manner in which it is attempted in this country. A codification of general principles, such as the Roman code, the German code, and the Louisiana code are codes of a proper character because of the careful statement of general principles.

The author says, "The greatest code the world has ever seen was adopted in Germany in 1896, to take effect in 1900. The Germans had a problem so difficult, due to the many varieties of law in the empire,—Roman, Canon, Germanic, Danish, French, as well as Austrian and Saxon codes, and what not,—that in comparison our problem seems simplicity itself. The Germans set themselves to their task with the system and thoroughness that characterizes all public work in that 'nation of damned professors.' First, a committee of five prominent, practical jurists was constituted in 1873 to plan the work. Next, a committee of eleven of the leading university professors of law and judges was appointed to prepare a provisional draft. The actual work of draftsmanship was assigned to five members of the committee, who worked individually on the branches severally assigned to them for seven years. Then the committee came together and prepared several drafts, which they reported, together with arguments pro and con. These drafts and arguments were printed broadcast, and subjected to the severest professional criticism for several years. A new committee of twenty-two was thereupon appointed, that re-drafted the proposed code in the light of all the criticism and discussion. After twenty-three years of painstaking labor by the finest legal minds in the empire, the civil code was completed,—and it is a little book that anyone may easily carry around in his coat pocket."

In conclusion, the author suggests a revision of the present codes rather than the making of a new code, and suggests that the various subjects should be assigned to commissions, and that the actual drafting should be done by experts in the particular subjects.

Taxation. "Notes on Some Recent Supreme Court Cases Relating to the Situs of Intangible Personal Property for Purposes of Taxation." By William Cullen Dennis, of Washington, D. C. 15 Columbia Law Review, p. 377 (May).

Recent cases in the Supreme Court of the United States on questions of double taxation have aroused considerable interest, a later case having made some very important changes in the rules and principles previously announced by the Supreme Court. Beginning with the leading case, State Tax on Foreign-held Bonds, 15 Wall. 322, the author shows that the Supreme Court has proceeded on the theory that taxation is the correlative of protection and that the state cannot possibly give protection to property beyond its jurisdiction, and that therefore the taxation power of a state is limited to its own jurisdiction; that with regard to property within its jurisdiction the taxing power of a state is supreme except as to property which may be said to come within the rule laid down in the great case of McCulloch v. Maryland, as being "instrumentalities of the federal government," and the more recent exception as to property properly a part of interstate or foreign commerce. The question, therefore, according to the author's decision, resolves itself to the question of the situs of property for the purposes of taxation. With respect to immovable property the rule is simple, as its situs is absolutely fixed in the state wherein it lies. As to tangible personal property the rule is clear that tangible porperty, like land, must be taxed wherever the property is actually found, and not having regard to the legal fiction, mobilia sequuntur personam. The greatest difficulty is, of course, in determining the situs of intangible personal property, and here the maxim, mobilia sequuntur personam has been given larger effect, resulting in the holding that intangible personal property should be taxed at the domicil of the owner, as being the real situs of the debt.

Several important decisions have, to some extent, modified the rule heretofore controlling such decisions, and the author discusses the decisions in extenso: New Orleans v. Stempel, 175 U. S. 309; Bristol v. Washington County, 177 U. S. 133; Board of Assessors v. Comptoir National, 191 U. S. 388; Metropolitan Life Insurance Co. v. New Orleans, 205 U. S. 395; Buck v. Beach, 206 U. S. 392; Liverpool Insurance Co. v. New Orleans Assessors, 221 U. S. 346.

The Stempel case held that credits evidenced by bills, notes or mortgages and being in the hands of an agent of the owner in a foreign state were liable to taxation in that state, although the owner was domiciled elsewhere. This principle was upheld in later cases until the case of Buck v. Beach introduced an element of uncertainty in the law holding that Ohio notes owned by residents in Ohio and due there, which had been sent to Indiana for the purposes of taxation, were not taxable in Indiana. Justices Day and Brewer dissented in this case, relying on the decision in the Stempel case. For some reason the author fails to consider the case of Wheeler v. Sohmer, 34 Sup. Ct. Rep. 607, which apparently overrules the case of Buck v. Beach, and holds that bonds, notes and other negotiables may be taxed at the actual situs of the instruments themselves, even if such situs is not identical with the domicil of either the creditor or of the debtor. The author's conclusion would seem to require revision, in view of these recent decisions.

Waters. "State Control of Navigable Waters." By Henry W. Taft, of New York City. 15 Columbia Law Review, p. 417 (May).

This article discusses the rule announced in the recent case of Long Sault Development Co. v. Kennedy, 212 N. Y. 1. This case involved the grant by the state of New York to a right to construct a gigantic dam across the St. Lawrence river to the Long Sault Development Company, who agreeu to expend $35,000,000.00 in the improvement of navigation (a purely public benefit), and the creation of a water power capable of generating electric energy (a purely private benefit). Gov. Hughes refused to sign the bill as first passed until it should provide for the participation of the state in the profits of the enterprise. After such an amendment was made the act became a law.

In 1913 the legislature passed an act purporting to repeal the charter of the company on the ground that it was an unconstitutional act of power by the legislature, that ground under the waters of the St. Lawrence were held in sovereign capacity. The Court of Appeals upheld the legislature, and based its conclusion on the ground that it was attempted by the charter to transfer to a private corporation the control, not alone of the land under the water, but also the "entire control of navigation," and that it was beyond the power of the legislature to cede such control, because thereby the state would part "for all time with its own power to improve such navigation." The author discusses very thoroughly the question of the state's control of navigable waters and the right to delegate the power to make public improvements thereon to private parties. The author says that through these recent decisions the title of private companies, who have obtained grants of power and of use through navigable waters, is now in some doubt. The Supreme Court of the United States, he says, has held that even where such grants have become vested the states may revoke such grants and take possession of the property under the power of eminent domain.

ITEMS OF PROFESSIONAL INTEREST

BAR ASSOCIATION MEETINGS FOR 1915—WHEN AND WHERE TO BE HELD.

American—Salt Lake City, Utah, August 17, 18 and 19.
Alabama—Montgomery, July 9 and 10.
California—San Francisco, August 23.
Colorado—Colorado Springs, July 9 and 10.
Florida—Atlantic Beach, July 23 and 24.
Minnesota—St. Cloud, August 5, 6 and 7.
Montana—Billings, August 13, 14 and 15.
North Carolina—Asheville, August 2, 3 and 4.
Oregon—Portland, August 23, 24 and 25.
South Dakota—Watertown, September 1, 2 and 3.
Utah—Salt Lake City, August 17, 18 and 19.
Washington—Portland, Ore., August 23, 24 and 25.
Wisconsin—Superior, July 14, 15 and 16.

CORRESPONDENCE.

REFORM IN JUDICIAL PROCEDURE.

Editor Central Law Journal:

In the issue of the Journal of May 21st, my attention is attracted by an article on "Reform and Procedure in Illinois," and I feel compelled to write a line on this subject, as we have in New Mexico, as you personally know, gone through an extended experience under an attempt to reform and simplify pleadings, practice and procedure in the courts. In that article, referring to "the laity," it is stated: "Their experience as clients has taught them that a great deal of time is consumed in quibbling over immaterial matters."

I had practiced law in New Mexico for many years before we adopted our so-called code in 1897, which is modeled after the provisions of several different code states, and my experience is that much more time since 1897 is consumed in "quibbling over immaterial matters" than had been the case under the earlier simplified common law practice. Prior to 1897, I felt reasonably certain as to all matters of procedure in the courts of record in New Mexico, but up to the present time I have never yet been able to acquire any such feeling of certainty and confidence under the so-called code. Whatever of reform may be necessary in Illinois, it is to be hoped that no such legislation shall be attempted as will produce the sort of troubles that we have had in New Mexico, and which I believe are common to all of the code states. I have frequently noted in digests, the reversal of cases in code states upon trivial matters of procedure which never could have occurred but for the mistaken efforts of misguided people to simplify matters which needed no simplification.

I am strongly of opinion that any needed reform in pleadings, practice and procedure ought not to be made a subject of legislation, but would better be left to the supreme court of the state, which should adopt rules of practice applicable to all the courts. If this course were taken, we would get a better system and one which could be easily and promptly modi-

fied or changed whenever any defects or unnecessary provisions were discovered.

Very truly yours,

FRANK W. CLANCY.

Santa Fe, N. M.

NOTE:—The personal allusion to the editor by our correspondent refers to his former residence in New Mexico. Simplification of pleadings, practice and procedure often exemplifies abortive attempts to do away entirely with the technicality that grows out of rules in a business or profession. This is esteemed foolishness by those who never were acquainted with their worth, but were cognizant of their hard bearing on the unlearned and unskilled, and who yet held themselves out as competent masters of their intricacies. The common sense (God save the mark) simplification, which has brought its burden to the digests under the head of Appeal and Error, stretches out in length of words to the crack of doom and settles nothing. Let those the people elect to administer justice be also the framers of its rules of procedure and then hold them responsible for its delays. What a silly thing it seems to give to courts the taking care of the substance of things, and refusing to give them authority to look after the details of performance. It is like putting upon the manager of a factory responsibility for its output and then denying to him the right to control its labor and methods of work. EDITOR.

BOOK REVIEW.

WATSON'S NOTES TO INDIANA STATUTES, 1914.

A very useful publication by Mr. B. F. Watson, of Indianapolis bar, appears to us to be the complete volume of notes to Indiana statutes. These notes are arranged under section numbers of Buures' Revised Statutes of Indiana, 1914, making it readily usable by practitioners. Cases are cited as they appear as reported, both in the regular Indiana Reports and in the Northeastern Reporter, and in such reports as A. E. Ann. Cases, and L. R. A. (N. S.). Besides, reference is frequently made to cases appearing in British Ruling Cases and Central Law oournal.

For the busy practitioner in Indiana the work would appear to be exceedingly useful, and its topical index makes it appeal as well to practitioners of other states.

The work is in one volume in law buckram, of clear type, of substantial appearance, and emanates from the publishing house of National Annotating Company, Crawfordsville, Ind., 1915.

HUMOR OF THE LAW

William Melnick was testifying before Judge Sabath against Joseph Brew, charged with firing a bullet at Melnick.

'Did you see any shot fired?" asked Brew's attorney.

"I heard it," said Melnick.

"Did you see the shot fired?" the attorney reiterated.

"I heard it," repeated Melnick. The attorney looked appealing to the judge.

"Answer the question," the court directed. "Did you see the shot fired?"

"No, but I heard it," said Melnick.

"Motion to strike out," said the attorney.

"Motion granted. Defendant dismissed," said the judge. Melnick stepped from the witness stand laughing.

"What do you mean by laughing so sarcastically in my court?" asked the judge.

"Did you see me laugh?" asked Melnick.

"No, but I heard you," answered the judge.

"Motion to strike out," said Melnick.

"Motion granted," said the court, with a smile.—Chicago Tribune.

There had been an accident on the worst railroad in the United States. You know the name of the road as well as I do, so what's the use of risking a libel suit by mentioning it.

The sole survivor of the wreck was sitting up in his hospital cot swathed in bandages. "I suppose you're going to sue the company for damages," said the friend at his bedside.

"No," said the damaged one, "I shall do nothing of the kind."

"Why not? You've certainly got a clear case against them."

"Clear case, nothing. Any intelligent jury in the world would bring a verdict of contributory negligence. I ought to have known better than to travel on the blamed line."

At a recent meeting in Hampton one of the speakers told of a colored witness who was rebuked by the judge for the constant repetition of the phrase, "also and likewise." "Now, Judge," replied the witness, "there's a difference, between those words. I'se gwine to 'splain. Yo' father was an attu'ny and a great one, wasn't he?" The judge assented, somewhat placated. "Well, judge, yo's an attu'ny also, but not likewise. See, Judge?"—Case and Comment.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Adverse Possession** — Prescription. — Though the occupancy of a street by a railroad constituted a public nuisance, it would support an acquisition of presumptive right against abutting property owners.—Felton v. Wedthoff, Mich., 151 N. W. 727.

2. **Alteration of Instruments**—Discharge of Maker.—Undersigning of notes by plaintiff without defendant's request or knowledge held not such a material alteration as discharged defendant from liability.—Kiefer v. Tolbert, Minn., 151 N. W. 529.

3. **Animals**—Evidence.—Evidence held to authorize submitting to the jury the question of defendant's negligence in permitting the escape of the stallion which inflicted injuries on plaintiff.—Whitney v. Ritz, N. D., 151 N. W. 762.

4. **Assault and Battery**—Aggressor.—Person provoking difficulty, and afterwards forming intention to kill, held guilty only of aggravated assault, if his mind was rendered incapable of cool reflection by blows.—Solis v. State, Tex., 174 S. W. 343.

5. **Assignments**—Special Fund.—Where an order was drawn on a special fund or account, which was wiped out by the drawers' subsequent indebtedness to the drawee, held, that the drawee was not liable thereon.—Ahrens & Ott Mfg. Co. v. George Moore & Sons, Tenn., 174 S. W. 270.

6. **Assumpsit, Action of**—Quantum Meruit.—Where special contract is terminated by defendant's unjustifiable act, plaintiff, who has performed labor or furnished material, may recover their value in indebitatus assumpsit upon count for quantum meruit.—Horne v. Richards, Me., 93 Atl. 290.

7. **Attachment**—Administration.—Property in the possession of executors for the purpose of administration was not subject to attachment.—McCoy v. Flynn, Iowa, 151 N. W. 465.

8.——Intervention.—Where attached property was sold and the proceeds placed in the hands of a custodian under orders of court, an intervener entitled to judgment could only recover for costs and the proceeds.—Maloney v. Jones-Wise Commission Co., Ark., 174 S. W. 239.

9. **Attorney and Client**—Compensation.—In a suit for compensation for legal advice, the calling of defendant's attorney as a witness to the value of, the advice was not an unfair practice; such attorney not being incompetent.—Maine v. Rittenmeyer, Iowa, 151 N. W. 499.

10.——Negligence.—In an action against an attorney for negligent conduct of the trial of an action brought for plaintiff against his employer, the question of negligence of the attorney held for the jury.—McLellan v. Fuller, Mass., 108 N. E. 180.

11. **Bailment**—Common-Law Lien.—An artisan's common-law lien depends for validity, as against third persons, upon his retention of the article or property subject to the lien.—Shaw v. Webb, Tenn., 174 S. W. 273.

12. **Bankruptcy**—Composition.—Where creditors unite in a composition with their debtor adjudged a bankrupt, a secret promise by the debtor to one creditor to pay him more than the others is void.—Citizens' Nat. Bank v. Kerney, Ind., 108 N. E. 139.

13.——Concealment.—One who failed to keep books for several months prior to bankruptcy may be charged with intent to conceal the condition of the business, so as not to be entitled to a discharge.—In re Janavitz, U. S. C .C. A., 219 Fed. 876.

14.——Corporation.—The trustee in bankruptcy of the treasurer of a corporation, dissolved for distribution of its assets, held, under Bankruptcy Act, July 1, 1898, § 47a as amended by Act June 25, 1910, § 8, not entitled to the treasurer's share in the corporate assets free from the corporation's claim for defalcations.—Marcus Shipping Ass'n v. Barnes, Iowa, 151 N. W. 525.

15.——Future Rents.—Under lease of cash carrier system, lessor held not entitled to have claim for future rents allowed, though the entire rent had become due before bankruptcy, and was provable under Bankr. Act, § 63a, where it subsequently retook possession.—In re Miller Bros. Grocery Co., U. S. C. C. A., 219 Fed. 851.

16.——Laches.—That the trustee allowed an attaching creditor to proceed to judgment in her suit against a debtor of the bankrupt held not laches preventing him from setting aside judgment in her favor under Bankruptcy Act, § 67, subd. "f."—Wilson v. Van Buren County, Farmers' Mut. Fire Ins. Co., Mich., 151 N. W. 752.

17. **Banks and Banking**—Depositor.—Where one makes a deposit in his name as trustee, that designation does not change his true relation to the fund which may be established.—Doyle v. E. Jossman State Bank, Mich., 151 N. W. 602.

18.——Mistake.—A bank by paying a check drawn on it is not thereby concluded as to the

amount it had been raised, but it and the depositor, having acted in good faith, may, on the ground of mistake, recover such amount.—McClendon v. Bank of Advance, Mo., 174 S. W. 203.

19. **Bills and Notes**—Burden of Proof.—In an action upon a note, where the maker set up fraud and misrepresentation, the burden of proof was on plaintiff bank to show that it was a holder in due course.—First Nat. Bank of Marcus v. Wise, Iowa, 151 N. W. 495.

20.——Preference.—Evidence held to show that a note given by a bankrupt to a creditor uniting in a composition was given as a secret preference.—Citizens' Nat. Bank v. Kerney, Ind., 108 N. E. 139.

21. **Boundaries**—Survey.—A transitman's testimony that he made the survey, and that it was a straight line, held admissible, though the surveyor's certificate did not include the name of the witness, where there was no attempt to dispute the survey and field notes as certified.—Jamtgaard v. Greendale Tp., N. D., 151 N. W. 771.

22. **Cancellation of Instruments** — Fraud. — Where the conveyance of a homestead is induced by the fraud of defendant, deed being made to defendant, and his wife, and the wife is no party to the fraud and puts no money into the homestead, it is not error to cancel the conveyance as to her.—Antoszewski v. City Plumbing Co., Mich., 151 N. W. 635.

23. **Carriers of Goods**—Common Carrier.—If a carrier carries goods as a public employment, undertaking to carry for persons generally, and holds himself out to the public as ready to engage in that business, as a business and not as a casual occupation he comes within the definition of a common carrier.—Campbell v. A. B. Storage & Van Co., Mo., 174 S. W. 140.

24.—Contributory Negligence.—For a carrier to relieve himself from liability for damages to a shipment by proof of the shipper's contributory negligence, he must show that such negligence was the sole cause of the damage.—Northwestern Marble & Tile Co. v. Williams, Minn., 151 N. W. 419.

25.——Initial Carrier.—Under the Carmack amendment the initial carrier of live stock is liable, notwithstanding the insolvency of the connecting carrier and the fact that the shipment was accompanied by a caretaker.—Texas Mexican Ry. Co. v. King, Tex., 174 S. W. 336.

26.——Special Service.—A contract to furnish a car to be carried by a train operated on designated days, held not one for a special service prohibited by the Interstate Commerce Act as amended.—J. W. Stewart & Son v. Chicago, R. I. & P. Ry. Co., Iowa, 151 N. W. 485.

27. **Carriers of Passengers**—Alighting.—The stopping of a car with the front exit touching the near side of a cross-street held not negligent, though a passenger was injured by alighting from the rear exit thinking that she was on the cross-street.—Hayes v. United Rys. & Electric Co. of Baltimore, Md., 93 Atl. 226.

28.——Damages.—A carrier is not liable for injuries to a passenger slipping on a banana peel on a car step while alighting, unless the trainmen knew of its presence or it had been there so long as to impute notice to them.—Louisville & N. R. Co. v. O'Brien, Ky., 174 S. W. 31.

29.——Instructions.—In an action for injuries to passenger, instructions as to degree of care required held not to make company an insurer, especially where the jury were told that it was not an insurer.—Marshall v. Wabash R. Co., Mich., 151 N. W. 696.

30.——Limitation of Liability.—The insertion in the ticket and baggage check of a fine print notice of the carrier's limitation of liability for baggage is not binding when not brought to the passenger's notice.—Bekam v. New York Cent. & H. R. R. Co., Mo., 174 S. W. 150.

31.——Proximate Cause—Under the evidence as to proximate cause, held, defendant was entitled to an instruction that neglect of duty of its servants to a sick passenger after a certain time could not be considered on actionable negligence.—Middleton v. Whitridge, N. Y., 108 N. E. 192, 213 N. Y. 499.

32. **Chattel Mortgages**—Application of Proceeds.—Where the first two of four notes secured by a chattel mortgage were signed by sureties, the creditor may apply the proceeds of a sale under the mortgage to the last two on which there were no sureties.—J. I. Case Threshing Mach. Co. v. Matthews, Mo., 174 S. W. 198.

33. **Collision**—Burden of Proof.—The burden of showing that a vessel, which was navigated in obedience to the rules, could have avoided a collision due to the fault of the other, rests on the latter.—The Putney Bridge, U. S. D. C., 219 Fed. 1014.

34. **Commerce**—Federal Employers' Liability Act.—That locomotive injuring employe of a railroad was not engaged in interstate commerce held not to affect such employe's right of action under the federal Employers' Liability Act of April 22, 1908.—Pittsburgh, C., C. & St. L. Ry. Co. v. Farmers' Trust & Savings Co., Ind., 108 N. E. 108.

35.——Webb-Kenyon Act.—The Webb-Kenyon Act is not unconstitutional as an attempt to confer upon the states the power to regulate interstate commerce.—State of West Virginia v. Adams Express Co., U. S. C. C. A., 219 Fed. 794.

36. **Compromise and Settlement**—Estoppel.—Legatees and executors cannot avoid a contract compromising a contest of the will because they did not know of receipts given by the heirs to deceased, where those receipts were in the possession and control of the executors.—Layer v. Layer, Mich., 151 N. W. 759.

37. **Constitutional Law**—Full Crew Law.—Full Crew Law held not unconstitutional because applying only to railroad lines of more than 50 miles, since such classification was reasonable and proper.—Kansas City Southern Ry. Co. v. State, Ark., 174 S. W. 223.

38.——Police Power.—The police power of the state to regulate or prohibit the manufacture and sale of intoxicating liquors is unaffected by the due process of law clause of the Fourteenth Amendment.—People v. Wheeler, Mich., 151 N. W. 710.

39.——Workmen's Compensation Act.—Any instruction of the Workmen's Compensation Act, fixing compensation commissioner's status as judicial and not executive, held to render the act a violation of Const. art. 5, requiring that

judicial officers be appointed by General Assembly.—Appeal of Hotel Bond Co., Conn., 93 Atl. 245.

40. **Conversion**—Wills.—For a testator to devise his land to trustees, with power to sell realty and invest the proceeds in personalty, does not work an equitable conversion, though the sale and reinvestment has that effect.—Porter v. Union Trust Co. of Indianapolis, Ind., 108 N. E. 117.

41. **Corporations**—Bankruptcy.—Directors of a corporation, though guilty of illegal acts, held not liable to the trustee in bankruptcy of the corporation, where the acts did not induce bankruptcy, and were done when there were no creditors.—Gill v. Ash, Md., 93 Atl. 210.

42.——Dissolution.—Where the treasurer failed to account for corporate funds, the corporation, on being dissolved for distribution of its assets, may set off, as against the treasurer's share, the amount which he is in default.—Marcus Shipping Ass'n v. Barnes, Iowa, 151 N. W. 525.

43.——Holding Out Officer.—The acts of the president of a corporation within the scope of his authority are acts of the corporation; and, if it has customarily permitted him to exercise acts within scope of his duties as general manager, it will be liable therefor.—C. L. Kraft Co. v. Grubbs, Ark., 174 S. W. 245.

44.——Trustees.—Officers of a corporation are its agents, and may not take in their own name title to property designed for the business of the corporation without being chargeable as trustees for its use.—Leader Pub. Co. v. Grant Trust & Savings Co., Ind., 108 N. E. 121.

45. **Costs**—Apportioning.—The court on appeal will not disturb apportionment of costs between the parties, where the fee bill is not in the record, and the court cannot know how many days witnesses were in attendance or the number of miles traveled by them.—Morrow v. Hall, Iowa, 151 N. W. 482.

46. **Criminal Law**—Expert Testimony.—Admission of expert testimony, based on the law of mathematical probabilities that the chance of the defects appearing in the words fraudulently inesrted in a document, being produced by another typewriter, was so small as to be practically impossible, held error.—People v. Risley, N. Y., 108 N. E. 200.

47.——Res Gestae.—On the separate trial of accused jointly indicted with three other persons for rape, evidence that one of the three committed sodomy on prosecutrix was admissible as a part of the res gestae.—State v. Harrison, Mo., 174 S. W. 57.

48. **Damages**—Wife's Services.—A husband suing for loss of his wife's services, may testify as to the value of her services as housekeeper, and his estimate may not be reduced because hired girls can be obtained at a lower figure.—Schwanenfeldt v. Metropolitan St. Ry. Co., Mo., 174 S. W. 143.

49. **Death**—Pleading.—The petition held not demurrable for failure to expressly allege that the contributions to the support of the beneficiaries would have continued.—Vandalia Coal Co. v. Bland, Ind., 108 N. E. 176.

50. **Dedication**—Evidence. — Dedication of land for a highway may be shown by open conduct of owner, indicating an intent to dedicate and by the public in good faith acting thereon. Pittsburg, C., C. & St. L. Ry. Co. v. Everington, Ind., 108 N. E. 133.

51. **Divorce**—Custody of Child.—Where the court in a divorce suit made no order as to the disposition of an infant child who was in the custody of the mother, the matter will not, the husband, who was successful below, not having complained, be reviewed on appeal.—Blue v. Blue, Ark., 174 S. W. 237.

52. **Domicile**—Temporary Removal.—Where a person removes from his former domicile a change of domicile is effected, unless it is shown that his removal was to be of a temporary nature.—Saunders v. City of Flemingsburg, Ky., 174 S. W. 51.

53. **Eminent Domain**—Jurors.—That a juror's grandfather had brought an action against another railroad company for loss resulting from condemnation of land in another part of the county did not disqualify him to serve in condemnation proceedings.—Williams v. Cambria & I. R. Co., Pa., 93 Atl. 337.

54.——Title by.—A city, instituting proceedings to condemn land for a street, held not to have acquired title by condemnation, where the owner received no compensation, but continued in possession paying taxes.—Carpenter v. City of St. Joseph, Mo., 174 S. W. 53.

55. **Equity**—Equity Rules.—A motion to dismiss a bill under the new equity rules admits, for the purpose of the motion, the truth of everything alleged in the bill that is well pleaded.—Destructor Co. v. City of Atlanta, U. S. D. C., 219 Fed. 996.

56. **Estoppel**—Forged Deed.—In the absence of evidence that defendant was misled, that plaintiff knew defendant claimed the land under a forged deed and tax titles, but nevertheless obtained a deed himself, held not to estop him from suing defendant for cutting timber on the land, after plaintiff got his deed.—Helmer v. Shevlin-Mathieu Lumber Co., Minn., 151 N. W. 421.

57. **Evidence**—Admissibility.—The rule that parol testimony is inadmissible to contradict a written contract does not apply, where the contract was the result of mutual mistake.—Citizens' Nat. Bank v. Kerney, Ind., 108 N. E. 139.

58.——Technical Terms.—Since the words "burlesque" or "burlesque combinations," used in a written contract calling for the production of theatrical attractions, are technical terms, it was not error to admit evidence to explain their meaning.—Hyde & Behman Amusement Co. v. Safe Deposit & Trust Co., Pa., 93 Atl. 285.

59. **False Imprisonment**—Arrest by Officer.—Where defendant police officer arrested plaintiff without authority, he was liable in damages for injuries and indignities received by plaintiff from other officers to whose custody she was transferred.—Ross v. Kohler, Ky., 174 S. W. 36.

60. **Fraud**—Misrepresentations. — Purchaser who went upon and viewed the land, but who did not measure it, held not precluded from recovery of damages for vendor's fraudulent misrepresentations as to acreage.—Whittaker v. Miller, Mo., 174 S. W. 115.

61. **Frauds, Statute of**—Original Promise.—Promise of defendant to guaranty payment of

6 per cent dividends and to redeem bank stock held original, and not collateral, so as to be within the statute of frauds.—West v. King, Ky., 174 S. W. 11.

62. **Gas**—Res Ipsa Loquitur.—The rule of res ipsa loquitur may be applied where gas has escaped from a service pipe installed by the defendant gas company on a consumer's premises at his cost and there has been no change in the premises affecting the pipe.—Manning v. St. Paul Gaslight Co., Minn., 151 N. W. 423.

63. **Homicide**—Evidence.—In a prosecution for the killing of her husband, evidence that accused and deceased had had frequent quarrels down to the time of the killing, and that she was greatly angered at him, was properly received.—State v. Keller, Mo., 174 S. W. 67.

64. **Infants**—Estoppel.—An infant executing an instrument, which recites that he is of age, is not thereby estopped from relying on infancy, though he had reached years of discretion.—Miller v. St. Louis & S. F. R. Co., Mo., 174 S. W. 166.

65. **Injunction**—Oil Lease.—A lessee under an oil lease held not entitled to enjoin the owner of the surface from interfering with the drilling of well so located as to unnecssarily interfere with defendant's rights.—Gillespie v. American Zinc & Chemical Co., Pa., 93 Atl. 272.

66. **Innkeepers**—Common-Law Lien. — The common-law lien of an innkeeper attaches to personal property in possession of a guest as a conditional buyer, provided the innkeeper had no notice of the nature and extent of the guest's title when property is brought to inn.—Shaw v. Webb, Tenn., 174 S. W. 273.

67. **Insane Persons**—Renewal Note.—The insanity of a surety is no defense to his liability, where the note sued on was a renewal of a similar note imposing the same liability upon him which he signed while he was sane.—Whitaker v. First Nat. Bank, Ky., 174 S. W. 47.

68. **Intoxicating Liquors**—Police Power.—The state can under its police power provide that the place of sale of intoxicating liquors shall be the place of delivery by the carrier, if such legislation does not interfere with interstate commerce.—State of West Virginia v. Adams Express Co., U. S. C. C. A., 219 Fed. 794.

69. **Insurance**—Autopsy.—A demand made for an autopsoy, less than three hours before the time set for the funeral, held, under the circumstances, not made at a reasonable time or on a proper occasion.—Johnson v. Bankers' Mut. Casualty Co., Minn., 151 N. W. 413.

70.——Forfeiture.—An insurance contract will be construed to avoid a suspension of liability or a forfeiture, and to sustain rather than defeat its purpose, where that can be done without violence to the language employed.—Mathews Farmers' Mut. Live Stock Ins. Co. v. Moore, Ind., 108 N. E. 155.

71.——Variance.—That insured was designated "Seaman & Martin" instead of the "Seaman-Martin Company, a corporation," held not to invalidate the policy.—Lenning v. Retail Merchant's Mut. Fire Ins. Co., Minn., 151 N. W. 425.

72. **Judicial Sales**—Intervening Grantees.—Where a judgment declared a lien on certain land in favor of an administratrix and against B and the land was sold to the administratrix, such judgment and sale barred the rights of intervening grantees of B.—United States Oil & Land Co. v. Bell, U. S. C. C. A., 219 Fed. 785.

73. **Judgment**—Collateral Attack.—A suit proceeding in equity seeking to restrain a sale on execution under judgment at law is a collateral attack on the judgment, and will not lie unless the judgment is absolutely void on its face.—Fletcher v. Barton, Ind., 108 N. E. 137.

74.——Estoppel.—A street railway company, suing in a federal court to enjoin the enforcement of an ordinance, cannot, after a decree adjudging the ordinance valid, assert its invalidity under the city charter and state law.—City of St. Louis v. United Rys. Co. of St. Louis, Mo., 174 S. W. 78.

75. **Landlord and Tenant**—Waiver.—Lessor's acceptance of rent, without objection, several weeks after it became due, held a waiver of a provision of the option that failure to pay rent when due should render the option void.—Crystal Lake Cemetery Ass'n v. Farnham, Minn., 151 N. W. 418.

76. **Licenses**—Ordinance.—An ordinance of the city of St. Louis imposing on street railway companies a quarterly license tax on each car of one mill for each pay passenger carried during the preceding quarter is not unreasonable.—St. Louis v. United Rys. Co. of St. Louis, Mo., 174 S. W. 78.

77. **Mandamus**—Complaint.—A complaint in mandamus must show both a clear legal right on the part of the relator to the relief sought, and a clear legal duty on the part of the defendant to perform the thing demanded.—State v. Graham, Ind., 108 N. E. 111.

78. **Master and Servant**—Federal Employers' Liability Act.—An employer is not, under the federal Employers' Liability Act, an insurer of the safety of the place of work, but is bound only to use ordinary care to protect his servants.—Hawkins v. St. Louis & S. F. R. Co., Mo., 174 S. W. 129.

79.——Respondeat Superior—Where defendant's chauffeur let another person, invited to ride with him, take the wheel, such other person's acts were the acts of the servant for which the defendant was liable—Slothower v. Clark, Mo., 174 S. W. 148.

80.——Safe Place to Work.—A master must exercise reasonable care and prudence to provide his servants a reasonably safe place to work, but this rule does not apply where the work is such that its progress constantly causes changes in the conditions and hazards of work.—Losasso v. Jones Bros. Co., Vt., 93 Atl. 266.

81. **Mines and Minerals**—Executory Sale.—A contract by which a lessee of mining land transferred its plants and leasehold rights held an executory sale, and not merely a lease, under which, on its forfeiture by lessor for nonpayment of an installment of purchase price, it could not also recover such installment.—G. W. Youngs Mining Co. v. Courtney, U. S. C. C. A., 219 Fed. 868.

82. **Municipal Corporations** — Governmental Functions.—Actionable negligence cannot be imputed to a city for mistake of judgment, or even negligence, of its officers in performing the governmental function of selecting a place for the loading of explosives, from which it derives no profit.—Joseph R. Foard Co. of Baltimore City v. State of Maryland, U. S. C. C. A., 219 Fed. 827.

83.——Ordinance.—An ordinance passed under express power will not be set aside by the courts for mere unreasonableness, but an ordinance under incidental or implied power may be set aside on that ground in a clear case of oppression.—City of St. Louis v. United Rys. Co. of St. Louis, Mo., 174 S. W. 78.

84.——Proximate Cause.—Where a barrel stave in a street was kicked aside by a policeman and struck a person standing on the curb, the proximate cause of the accident was not an unlawful obstruction of the street by the stave.—Evans v. City of Des Moines, Iowa, 151 N. W. 397.

85. **Officers**—Commission.—An elective officer has title to his office from the people, not from the executive commission or other formality, and his term may begin notwithstanding his failure to receive a commission.—State v. Malone, Tenn., 174 S. W. 257.

86. **Partnership**—Action by Partner.—A partner who paid one-half the price of the stock as represented by his co-partner can recover from the latter the difference between the amount paid and one-half the actual price thereafter paid by the co-partner for the goods, though the stock was worth more than the represented price.—Pickett v. Wren, Mo., 174 S. W. 156.

87. **Principal and Agent**—Contract.—Under contract whereby defendant was to act as plaintiff's selling agent for beer, held that plaintiff

was not bound to furnish defendant with selling agent's license required by state law.—Cape Brewing & Ice Co. v. Kippenberg, Mo., 174 S. W. 201.

88. **Principal and Surety**—Construction of Contract.—Where a secured contract for sale of Annabelle coal was silent as to sales of other coals, contracts between the buyer and seller with reference to other coals did not constitute a departure.—Pittsburg-Buffalo Co. v. American Fidelity Co., U. S. C. C. A., 219 Fed. 818.

89. **Railroads**—Burden of Proof.—A railroad company sued for injury to a traveler in a collision with a train at a crossing has the burden of proving contributory negligence.—Barrett v. Delano, Mo., 174 S. W. 181.

90.——Demurrer.—A complaint against a railroad for injuries to a horse held not demurrable as failing to show jurisdiction of the subject-matter, or that the horse entered the right-of-way where the railroad was required to fence. —Pittsburgh, C., C. & St. L. Ry. Co. v. Vance, Ind., 108 N. E. 158.

91.——Duty to Public.—A bona fide sale of the property and franchises of a railroad corporation does not discharge the obligations of the corporation, as to the location of its general offices, machine shops, and roundhouses.—International & G. N. Ry. Co. v. Anderson County, Tex., 174 S. W. 305.

92.——Trespasser.—One going into an elevator shed and sitting so that his feet were inside the rail of a switch track, and who was killed by a car shunted into the elevator, was a trespasser, and, as such, guilty of contributory negligence as a matter of law.—St. Louis, S. F. & T. Ry. Co. v. West, Tex., 174 S. W. 287.

93. **Release**—Joint Tort-feasor.—An agreement for a valuable consideration to dismiss an action against one of two joint tort-feasors does not release the liability of the other tort-feasor. —Pickett v. Wren, Mo., 174 S. W. 156.

94.——Mistake.—A release obtained from plaintiff, when by pain, etc., he understood it to be a receipt covering his wages, would be no defense to his action for personal injury.—Platt v. American Cement Plaster Co., Iowa, 151 N. W. 403.

95. **Replevin** — Constructive Possession. — Sheriff who attached cattle held to have constructive possession sufficient to support replevin action against him, though he left the cattle where they were to be delivered upon demand.—Wood v. Rathman, Ind., 108 N. E. 126.

96. **Robbery**—Variance.—The variance between an indictment alleging that accused robbed prosecutor of one 10-cent piece, and the proof of robbery of two 5-cent pieces, is fatal. —McCaskey v. State, Tex., 174 S. W. 338.

97. **Sales**—Certificates of Warehouseman.—As between two innocent holders of certificates for the same whisky, held that the person first paying the consideration was entitled to the whisky as against subsequent purchaser of prior certificates issued without consideration.— Moore v. Thomas Moore Distilling Co., Pa., 93 Atl. 347.

98.——Latent Defects.—A buyer of an automobile is justified in relying on the seller's representations as to those parts not open to inspection, but under the rule of caveat emptor he cannot recover for misrepresentations as to visible defects.—Morbrose Inv. Co. v. Flick, Mo., 174 S. W. 189.

99.——Retention of Title.—A seller's retention of title to personal property to secure purchase money partakes of nature of a lien and when retained in written, unregistered contract, is superior to any right of purchaser for value and without notice.—Shaw v. Webb, Tenn., 174 S. W. 273.

100. **Seduction** — Statutory Construction.— Laws 1903, c. 212, §§ 1, 2, held not to abrogate the common law and statutory law theretofore existing which gave a father a right of action for debauchery of his daughter, including loss of services.—Vogt v. Aldrich, S. D., 151 N. W. 428.

101. **Specific Performance**—Public Policy.—A contract to furnish to a street railroad company electric power for the operation of its cars held not against public policy, in such sense that it could not be specifically enforced. —Montgomery Light & Water Power Co. v. Montgomery Traction Co., U. S. D. C., 219 Fed. 963.

102. **Street Railroads**—Bond.—A street railway company held not liable on a bond conditioned for completion of its road on certain streets before a certain date, where noncompletion was due to refusal of other municipalities to consent to the building of the road.— Borough of Monaca v. Monaca & A. St. Ry Co., Pa., 93 Atl. 344.

103.——Warning.—A person driving a wagon on a street car track is entitled to warning of the approach of a car and to sufficient time to get off the track in safety.—Gordon v. Beaver Valley Traction Co., Pa., 93 Atl. 334.

104. **Taxation**—Double Taxation.—A statute imposing a tax on interest or dividends on specified securities and exempting the securities does not present a question of direct double taxation.—In re Opinion of the Justices, N. H., 93 Atl. 311.

105.——Redemption.—Notices of expiration of the time of redemption from tax sales held void, where they failed to state that the certificates were presented to the county auditor by the holder thereof.—Helmer v. Shevlin-Mathieu Lumber Co., Minn., 151 N. W. 421.

106.——Residence.—Where a person abandoned his former home and went to F with a view of remaining there indefinitely or until he purchased property elsewhere and transacted business there for nearly three years, he acquired a residence there for the purpose of taxation.—Saunders v. City of Flemingsburg, Ky., 174 S. W. 51.

107. **Trade-Marks and Trade-Names** — Geographical Name.—While a geographical or descriptive name may not be exclusively appropriated as a trade-mark, yet a manufacturer having adopted such a name as a designation for his goods, is entitled to be protected therein as against unfair competition.—Zittlosen Mfg. Co. v. Boss, U. S. C. C. A., 219 Fed. 887.

108. **Trusts**—Evidence.—Entry in bank book and statement of depositor to bank officers indicating that he desired the deposit to go to M in case he survived him held insufficient to establish a declaration of trust in favor of M.— Mathias v. Fowler, Md., 93 Atl. 298.

109.——Express Trust.—A bank, taking the assets of an insolvent bank and undertaking to administer them for the benefit of creditors, held liable to a depositor of the insolvent bank for the deposit as trustee of an express trust. —Musgrove v. Macon County Bank, Mo., 174 S. W. 171.

110. **Waters and Water Courses**—Improvement District.—Where one improvement district acquired a waterworks, that the supply might in the future be insufficient to supply that district and persons outside, is no ground for restraining the city from selling water to persons residing without the district.—Armour v. City of Ft. Smith, Ark., 174 S. W. 234.

111. **Weapons**—Carrying Concealed. — Accused, who traveled part of the way on a public road on returning from the boundary line of his land, whence he had gone armed with a pistol to prevent a neighbor from shooting his hogs, held not guilty of violating the pistol law.—Parker v. State, Tex., 174 S. W. 343.

112. **Wills**—Construction.—In construing a will, conflicts should be reconciled, and that construction which will give effect to all provisions should be preferred.—Porter v. Union Trust Co. of Indianapolis, Ind., 108 N. E. 117.

113.——Patent Ambiguity.—The use of the word "heirs" in a device does not create a patent ambiguity, but the word must be given its Primary meaning, unless the will, read in the light of surrounding circumstances, indicates that it was used in a different sense.—Harris v. Weed, Conn., 93 Atl. 232.

114. **Witnesses** — Confidential Communications.—Letters written by an attorney to his client, not in court, which are alleged to have maliciously misrepresented plaintiff's financial standing, are not confidential communications which the attorney cannot disclose without the client's consent.—Simons v. Petersberger, Iowa, 151 N. W. 392.